IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.660 OF 2007

Everest Fincap Pvt. Ltd. ...Petitioner
V/s.
Official Liquidator of M/s.Bradbury Mills Ltd.(In Liqn) & Ors. ...Respondents

Ms.Rajani Iyer, Sr. Advocate with Ms.Sheetal S. Shah i/b. Mehta & Girdharlal, for the Petitioner.
Mr.B.B. Parekh, Advocate, for Respondent No.1.
Mr.V.J. Shah i/b. Kanga & Co. for Respondent No.2.
Mr.Devanshu Desai, Advocate, for Respondent No.7

CORAM : J.N. PATEL &
A.A. SAYED, JJ.

DATE : 15TH JUNE, 2007.

P.C. :

1. Heard.

2. The Petitioner is the purchaser of the property from secured creditors of which the lead bank is United Commercial Bank. The Petitioner has approached this Court impugning the order dated 5.3. 2007 passed by the Debts Recovery Appellate Tribunal at Mumbai in M.A. No.868 of 2005 in Misc. Appeal No.48 of 2006 which has been filed by the Official Liquidator after seeking permission of the Company Judge in the matter.

3. We have heard the learned Counsel for the parties at length. The main contention raised on behalf of the Petitioner was that as the secured creditor has transferred the property in favour of the Petitioner by negotiation which was not objected to by Official Liquidator and the transaction has been finally settled and the Official Liquidator did not bother to challenge the impugned orders passed by the Debts Recovery Tribunal dated 31.3.2005 and 29.11.2005 has preferred an Appeal after the delay of 226 days, it was not proper on the part of Appellate Tribunal to have condoned delay. The Debts Recovery Tribunal ought not to have entertained the application.

4. It is submitted that the transaction was out of negotiation with the secured creditors which was accepted by them and in the given facts and circumstances it was a fair offer, and therefore the Official Liquidator at the first instance did not find it objectionable and did not challenge the same. It is subsequently after lapse of 226 days that the office of the Official Liquidator suddenly found the settlement as objectionable and has preferred this Appeal before the Debts Recovery Appellate Tribunal. It should not have been permitted by condoning the delay for which no

good and sufficient reason was placed before the Hon’ble chairperson of the Appellate Tribunal

5. When this Petition was listed before us on the last date, we were required to issue specific directions to the Official Liquidator to file his affidavit-in-reply as we found that the Official Liquidator was not diligent in prosecuting the matter before the Debts Recovery Tribunal and Debts Recovery Appellate Tribunal.

6. As directed by us, the Official Liquidator has tendered his affidavit. Copies of the same were furnished to the Petitioner on 14th June, 2007. The affidavit-in-reply is taken on record.

7. In so far as the impugned order condoning the delay is concerned, it speaks for itself and we do not find any error or illegality in the said order so as to exercise our extra-ordinary jurisdiction to interfere with discretion exercised by the Hon’ble chairperson of the Appellate Tribunal.

8. In so far as the contentions raised before us on the merits of the matter is concerned, in the impugned order it has been clearly observed that the

parties would have opportunity to raise all their contentions at the time of hearing, so it is not a case where the Petitioner is left without a remedy.

9. In so far as question of condonation of delay is concerned, it is a discretionary jurisdiction vested with the Court or Tribunal and in the facts of the present case the discretion exercised by the chair person of the Debts Recovery Appellate Tribunal cannot be said to be unjust or improper. Therefore, we dismiss the Petition.

10. Before we part with the order, we may observe that we have not taken into consideration merits of the matter and have restricted ourselves to the impugned order under challenge.

11. We find the conduct of the Official Liquidator unsatisfactory in dealing with the matter. We refrain from making any observations or adverse remarks in the matter, as the office was held by different persons but it is a matter of serious concern and deserves to be enquired by the disciplinary authority of the Official Liquidator i.e. Ministry of Corporate Affairs. We are quite sure that the Ministry of Corporate Affairs would look into the matter with all seriousness. With these

observations, the Writ Petition stands dismissed with no order as to costs.

12. After dictating the order, the learned Counsel for the Petitioner submitted that the stay granted by the Debts Recovery Appellate Tribunal, Bombay, be extended for a period of three weeks to enable the Petitioner to seek legal advise and take appropriate steps in the matter. In our view, it will be quite fair on our part to grant time to the Petitioner as sought for. Therefore, the order of stay passed by the Debts Recovery Appellate Tribunal would continue for a period of three weeks from today.

[J.N. PATEL, J.]

[A.A. SAYED, J.]